

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7143

Petition of David Sander vs. Vermont Electric)
Cooperative, Inc. in re: dispute concerning a power spike)
at a customer's residence located in Richmond, Vermont)

Hearing at
Richmond, Vermont
January 25, 2006

Order entered: 10/19/06

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: David Sander and Roselie Sander
Pro Se

Patricia S. Orr, Esq.
Powell, Orr & Bredice, PLC
for Vermont Electric Cooperative, Inc.

I. INTRODUCTION

This docket concerns a petition filed with the Public Service Board ("Board") on January 4, 2006, by David Sander alleging that a "massive power spike" was sent to his property over a Vermont Electric Cooperative, Inc. ("VEC") transmission line, and that, as a result of this power spike, several items of his personal property were damaged or destroyed.¹ Mr. Sander's petition also expressed dissatisfaction with VEC's handling of this customer service issue. Mr. Sander seeks reimbursement from VEC for the repair and replacement value of the property allegedly damaged or destroyed by the power spike.

On January 25, 2006, a technical hearing in this docket was held in the Second Floor Meeting Room, Richmond Town Center, Richmond, Vermont.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. Letter of David Sander, dated December 14, 2005.

II. FINDINGS

1. David Sander lives in Richmond, Vermont, and receives electric service from VEC. Petition at 1.
2. On September 29, 2005, a power surge was transmitted over a VEC distribution line into Mr. Sander's home. Tr. 1/ 25/06 at 29, 46, 64 (R. Sander), 77-78 (Fundis); exh. 9.
3. As a result of this power surge, Mr. Sander suffered damage to certain items of personal property including a television, an air conditioner, and several GFCI (Ground Fault Circuit Interrupter) outlets, the repair or replacement of which cost Mr. Sander the sum of \$849.58 (Eight Hundred Forty Nine Dollars and Fifty-Eight Cents). Exh. 10; tr. 1/ 25/06 at 19 (D. Sander).
4. VEC determined that the power surge was the result of a falling tree that caused a VEC transmission line to make contact with a VEC distribution line during a storm on September 29, 2005. Exh. 9.

III. DISCUSSION

In this case, Mr. Sander looks to VEC to take responsibility for the cost of repair or replacement of his property that was damaged as a result of a power spike that was transmitted over VEC lines into his home. VEC asserts that the power spike was caused by circumstances beyond its control when a tree fell down on a power line during a storm. VEC contends that the tree was located outside of the company's right of way,² and claims that it has no responsibility for that loss because of Vermont Electric Cooperative, Inc., General Rules and Regulations, #11 ("GRR #11"), which provides:

In recognition of the fact that the wiring and facilities for the use of electricity on the customer's premises are owned by and under the control of the customer, the Cooperative shall not be responsible for any loss, cost, damage or expense to persons and/or property resulting from the use or presence in the customer's wiring or appliances of electricity supplied in accordance with the provisions of these Rules and Regulations.

2. Exh. 9.

At the technical hearing, Mr. Sander asserted that the power spike was a voltage surge that VEC had the ability to control.³ Both he and Mrs. Sander described the power spike as being an extreme event, involving a voltage fluctuation that was well beyond normal. They also disputed VEC's conclusion that the power surge occurred because a falling tree that was located outside of VEC's right-of-way caused a VEC transmission line to make contact with a VEC distribution line, and they questioned whether the cause was related to faulty equipment.⁴ Mr. Sander argued that GRR #11 does not apply to the circumstances at hand because VEC "is responsible for maintaining their power grid and maintaining the quality of electricity flowing through it."⁵

This docket raises the question whether, and to what extent, VEC should be held accountable for the power spike and its consequences. Although the essence of Mr. Sander's complaint is that VEC failed to prevent a power spike that it could have prevented, Mr. Sander also complains that VEC was uncooperative with respect to resolving the Sanders' concerns. I will first address the liability claim, and then discuss the customer-service concerns raised in this proceeding.

The Liability Claim

VEC has defended its decision to decline the payment that Mr. Sander seeks on the basis of GRR #11, which addresses substantively some circumstances under which VEC is insulated from responsibility for its customers' property losses. While the Board has jurisdiction to determine whether VEC has violated any of its tariff provisions, the Board does not have jurisdiction to adjudicate the liability claim itself.

The question of Board jurisdiction to adjudicate negligence liability claims was addressed most recently by the Vermont Supreme Court in *Green Mountain Power Corporation v. Sprint*

3. Tr. 1/ 25/06 at 19, 13-14 (D. Sander).

4. Tr. 1/ 25/06 at 38, 127 (D. Sander), 50-53 (R. Sander).

5. Tr. 1/ 25/06 at 74 (D. Sander).

Communications.⁶ In that case, Sprint Communications ("Sprint") sought compensation for damage done to a fiber optic cable by Green Mountain Power Corporation ("GMP") during an excavation. The Supreme Court held that the Board's authority to adjudicate matters relating to excavation of underground utility lines derived from 30 V.S.A. § 7008(a), which did not include a grant of authority to the Board to determine questions of liability for actual damages caused by a person who violated that statute.⁷ The Supreme Court confirmed that the Board "has only those powers that are expressly conferred upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted."⁸ The Court determined that the language of 30 V.S.A. § 7008(a) does not expressly confer upon Board the authority to make damage liability determinations, and that such authority could not be presumed or implied because the legislative history evinced a legislative intent not to grant such authority.⁹ Accordingly, the Court held that the Board did not have jurisdiction to adjudicate the negligence liability claim made by Sprint against GMP.

Similarly, in this case, no party has cited a statutory provision (nor am I aware of any provision in Title 30 of the Vermont statutes) that confers upon the Board the authority to make the particular liability determination that is the subject of this case. I, therefore, conclude that the Board does not have jurisdiction to adjudicate the specific claim for damages raised in Mr. Sander's complaint.

Customer-Service Concerns

Mr. Sander has not cited any specific tariff, statute, rule or order of the Board that VEC allegedly has violated. However, the testimony and other evidence presented in this docket suggest troublesome shortcomings on VEC's part to respond to the Sanders' customer service concerns.

6. 172 Vt. 416, 779 A.2d 687 (2001).

7. *Id.*, at 692.

8. *Id.*, at 690, citing *Trybulsky v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 9, 20 A.2d. 117, 121 (1941).

9. *Id.*, at 692.

At the technical hearing, Mrs. Sander testified that she was the first to contact VEC about liability for the Sanders' damaged/destroyed property.¹⁰ There is no evidence in the record of this docket showing whether this initial conversation between VEC and Mrs. Sander included discussion regarding VEC's determination about what caused the power spike. However, the record clearly shows that the Sanders repeatedly requested that VEC provide them with documentation and/or specific information explaining VEC's determination that the problem tree was outside of VEC's right-of-way; the record further shows that VEC consistently refused to provide the Sanders with that information.¹¹ Moreover, Mr. Sander testified that when he called VEC to get information about the time and place of an upcoming informational meeting/hearing "where the Co-op was inviting people to come and testify about problems," VEC refused to give him that information and refused to provide him with the phone number for his Co-op representative.¹²

There is no evidence in this docket that VEC's tariff requires VEC to provide (or excuses VEC from providing) its customers with a specific explanation about the cause of a power spike. Nor is there evidence in this docket that VEC's tariff requires it to provide, over the telephone, its customers with the telephone number(s) of their Co-op representative or time-and-place information about VEC meetings. However, VEC's actions in this situation appear to have turned an opportunity to amicably provide information to Mr. and Mrs. Sander into a confrontation that ultimately involved the time and attention of at least three VEC employees

10. Tr. 1/ 25/06 at 28 (R. Sander).

11. Tr. 1/ 25/06 at 58-59 (R. Sander), 6-7 and 12-13 (D. Sander).

During the initial contact between Mrs. Sander and VEC, Mrs. Sander was advised by the VEC customer service representative with whom she spoke that VEC would submit the Sanders' claim to VEC's insurance company, but that it was unlikely that VEC's insurer would pay such a claim. Tr. 1/ 25/06 at 28 (R. Sander). After that initial conversation, Mr. and Mrs. Sander made several attempts to obtain specific information concerning VEC's determination about the cause of the power spike, and specifically about the problem tree, from VEC directly and from VEC's insurer. Tr. 1/ 25/06 at 58-59 (R. Sander), 6-7 and 12-13 (D. Sander). However, the Sanders were not given the information they requested.

VEC did respond to the Vermont Department of Public Service ("Department") upon the Department's request (on behalf of the Sanders) for information concerning this matter. Exh. 6; tr. 1/ 25/06 at 26 (D. Sander). The communication between VEC and the Department took place subsequent to the Sanders' many attempts to obtain information directly from VEC and its insurer.

12. Tr. 1/ 25/06 at 12 (D. Sander).

and/or officials, a consumer advocate at the Department, and the Board. At the technical hearing Mrs. Sander stated:

I don't believe it was connected to that tree. I have no idea what happened. I think that the fact that it was windy that deemed – could be deemed coincidental. There is absolutely no proof on their part as to what happened. They won't give me an incident report or anything.

I mean we could have resolved this easily without dragging you in to this matter if they had proven to us, if they had shown us something, but they said that that was not something that they were required to provide. And it was proprietary information. So though they were using it against us to deny our claim, they would not provide us the information. Which may have just resolved this whole matter before dragging everybody else into it.¹³

Also, at the technical hearing, Mr. Sander stated: "it's just very unprofessional, unacceptable, and outrageous for a public company to conduct themselves in this manner."¹⁴

The Board has jurisdiction in all matters respecting "the manner of operating and conducting any business, subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public."¹⁵ On the basis of the record in this docket, I conclude that the manner in which VEC conducted its business with respect to its interactions with Mr. and Mrs. Sander pertaining to the September 29, 2005, power spike was unreasonable and inexpedient. Therefore, I recommend that the Board direct VEC to provide Mr. and Mrs. Sander with a detailed explanation of how it determined the cause of the power surge, including a visit with Mr. and Mrs. Sander to the location at which VEC identified the problem tree and the crossed transmission and distribution lines.

13. Tr. 1/ 25/06 at 38 (D. Sander).

14. Tr. 1/ 25/06 at 22-23 (D. Sander). I further note that Mr. Sander's petition, as well as his testimony at the technical hearing, put into context his frustration about this matter. He described two prior unsatisfactory interactions with VEC related to right-of-way maintenance, and, in response to VEC counsel's question to Mrs. Sander, "Had you lost power before?", Mrs. Sander responded, "We have been customers of the Co-op before. We lose power all the time. They are notorious for that around this region." Tr. 1/ 25/06 at 5-6 (D. Sander), 42 (R. Sander); Petition at 2.

15. 30 V.S.A. § 209(3).

Finally, I note that, within the past five years, three different right-of-way maintenance issues have arisen between VEC and Mr. Sander, and in all three instances, Mr. Sander has borne expense.¹⁶ The nature and frequency of these instances raises concern about VEC's vegetative management practices, including VEC's customer relation policies and practices in connection therewith. These matters merit further consideration by the Board. Currently, the Board has an open proceeding, Docket No. 7120, in which it is reviewing a VEC request for a rate increase. A memorandum of understanding ("MOU") has been filed in proposed settlement of that docket, a portion of which addresses funding for vegetative management. I therefore recommend that, in considering the MOU filed in Docket No. 7120, the Board review VEC's vegetative management practices, including VEC's customer relation policies and practices in connection therewith.

IV. CONCLUSION AND RECOMMENDATIONS

For the reasons discussed above, I conclude that the Board does not have jurisdiction to adjudicate the specific claim for damages raised in Mr. Sander's petition. I therefore recommend that the Board dismiss Mr. Sander's claim for damages.

I further conclude that the manner in which VEC conducted its business with respect to its interactions with Mr. and Mrs. Sander pertaining to the September 29, 2005, power spike was unreasonable and inexpedient. Accordingly, I also recommend that the Board direct VEC to provide Mr. and Mrs. Sander with a detailed explanation of how it determined the cause of the power surge, including a visit with Mr. and Mrs. Sander to the location at which VEC identified the problem tree and the crossed transmission and distribution lines.

Finally, I conclude that VEC's vegetative management practices, including VEC's customer relation policies and practices in connection therewith, should be reviewed further by the Board. Therefore, I recommend that the Board undertake such a review as part of its consideration of the MOU filed in Docket No. 7120.

16. Mr. Sander presented uncontroverted testimony that, in 2002, VEC had held him financially responsible for a tree that had fallen on a VEC line, and that, in 2003, VEC had cut down and pruned trees on his property, leaving Mr. Sander with the responsibility for removing the felled trees and debris. Tr. 1/25/06 at 5-6.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 27th day of September, 2006.

s/Judith M. Kasper

Judith M. Kasper, Esq.
Hearing Officer

V. BOARD DISCUSSION

On September 6, 2006, VEC filed comments on the Hearing Officer's proposal for decision and requested oral argument. However, on September 25, 2006, VEC withdrew those comments, and withdrew its request for oral argument.¹⁷ Accordingly, we are issuing our Order in this docket without further delay.

We agree with the Hearing Officer that we do not have jurisdiction to determine the specific claim for damages made by Mr. Sander, and therefore, we dismiss that claim. We do have concern, however, about the customer service issues that arose in this case. Therefore, we agree with the Hearing Officer that it is appropriate for VEC to provide Mr. and Mrs. Sander with a detailed explanation of how it determined the cause of the power surge, including a visit with Mr. and Mrs. Sander to the location at which VEC identified the problem tree and the crossed transmission and distribution lines.

Finally, we note that, in Docket No. 7120, VEC has committed to improving its vegetative management program. The topic of customer relation policies in connection with VEC's vegetative management practices has not been specifically addressed in that docket. Nevertheless, we expect that VEC will make a good-faith effort to deal with the broad question of customer relations in its vegetative management practices, so as to prevent the development of situations such as the one presented in this case.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusion and recommendations of the Hearing Officer are hereby adopted.
2. Mr. Sander's claim for damages is hereby dismissed.

17. Letter of Bennett Evans Greene, dated September 22, 2006.

3. Within thirty days of the date of this Order, Vermont Electric Cooperative, Inc. ("VEC") shall provide Mr. and Mrs. Sander with a detailed explanation of how it determined the cause of the power surge, including a visit with Mr. and Mrs. Sander to the location at which VEC identified the problem tree and the crossed transmission and distribution lines.

Dated at Montpelier, Vermont, this 19th day of October, 2006.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 19, 2006

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.